IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 231 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

RAMAN PUNJABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 231 of 1999

MR G RAMAKRISHNAN for Petitioner No. 1

MR BD DESAI APP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/06/2002

C.A.V. JUDGEMENT

1. This appeal preferred by the appellant from jail challenges the order of the learned Additional Sessions Judge, Ahmedabad (Rural) in Sessions Case No.34 of 1998

under which the appellant is sentenced to rigorous imprisonment for seven years and fine of Rs.1,000/-, in default, further rigorous imprisonment for one month for the offence punishable under Section 304 (Part I) of the Indian Penal Code, 1860 ('the IPC' for short). The appellant was charged for the offences under Sections 302 and 504 of the IPC and Section 135 of the Bombay Police Act, but convicted and punished as aforesaid.

2. According to the prosecution, on 7.6.1998 at around 8.30 p.m., the appellant had picked up a quarrel with the deceased victim, namely, Naranji, at his larry-stall where the victim, a loner, also lived. In a fit of rage during the verbal altercations over not being given bidi and match-box on credit, the appellant picked up a piece of log lying there and hit the victim on his head, as a result of which Naranji died on the spot.

2.1 There was sufficient medical evidence of the doctor at Exh.9 to establish that Naranji had died of head injury and two eye witnesses, namely, Mahendrasinh and Yusufbhai, at Exhs.17 and 18 respectively corroborating each other, deposed that upon the sounds of verbal altercations between the appellant and the victim, they had rushed to the spot to find that Naranji was beaten and the appellant had left the scene after throwing the piece of wood. Complaint was lodged, inquest panchnama was made and other formalities of investigation were completed in quick succession wherein, according to the police, the appellant had presented himself at the police station next morning. At that time, blood-stains were also found on his clothes which clothes were recovered and the blood on them was, upon serological analysis, found to be of the same group as was found on the body of the victim and on the wooden piece with which the victim was hit. Thus, the essential ingredients of culpable homicide not amounting to murder were, on appreciation of evidence in light of the alternative version suggested by the appellant, held to have been proved and no ground was urged or made out to interfere with the same.

3. The important facts which stand out from the record and were emphasized by the learned counsel for the appellant, Mr.G. Ramakrishnan, were that the appellant and the victim were known to each other and had the relationship of teasing each other as stated by both the eye witnesses of the incident; that the visit of the appellant at the victim's stall was not a planned one for the commission of any crime and he did not carry any weapon and that the victim was injured and killed by a

single blow. These facts and factors clearly indicate that the offence was committed in a sudden fit of rage and there was no evidence to indicate an intention to kill. What can be attributed at the most to the appellant was the knowledge that the kind of injury which he was inflicting on the head of the appellant was likely to cause death. Therefore, the appellant could have been convicted and punished under the Second Part of Section 304 and not under the First Part of that Section.

4. The learned counsel for the appellant relied upon the judgment of the Supreme Court in KARAM SINGH v. STATE OF PUNJAB [1994 SCC (Cri.) 64], wherein the sentence was reduced from life imprisonment to five years rigorous imprisonment after holding that the injury was not intended to cause death and the offence was found to be punishable under Part-II of Section 304 of the IPC. The judgment of the Supreme Court in SASI ALIAS CHALIL SASI v. STATE OF KERALA [2000 SCC (Cri.) 695] was relied upon to submit that where one blow on vital part of the body was dealt without the intention of causing death, the offence should be the one under Part-II of Section 304 of the IPC and not under Part-I. The sentence in that case was reduced to rigorous imprisonment for four years. The judgment of the Supreme Court in MADHUSUDAN SATPATHY v. STATE OF ORISSA [AIR 1994 SC 474] was relied upon to submit that where no deadly weapon was used and the accused had only knowledge that the injuries inflicted by them were likely to cause death and had no intention of causing death, the conviction was altered to Section 304 (Part II) and the sentence of imprisonment was reduced to three years rigorous imprisonment. Relying upon these judgments and the fact that the appellant has already undergone rigorous imprisonment for more than 3 years and was in an extremely poor condition while his old mother and four sisters were dependent upon him, it was urged that the sentence may be suitably reduced so as to immediately release the appellant.

5. In the facts and circumstances discussed hereinabove, the appeal is partly allowed and, confirming the conviction of the appellant to the extent that the appellant was liable to be punished under Part-II of Section 304 of the IPC, the order of sentence, including fine, is modified and the sentence is reduced to rigorous

imprisonment for the period already served by the appellant. Accordingly, the appellant is ordered to be set at liberty forthwith unless he is required in custody for any other purpose.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)